

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

01/08/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000130

FILED: _____

STATE OF ARIZONA

B DON TAYLOR

v.

THOMAS GEORGE DELANEY

CAMERON A MORGAN

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5891140

Charge: 1. DUI-ALCOHOL
2. FAILURE TO CONTROL SPEED TO AVOID COLLISON

DOB: 01/26/46

DOC: 03/18/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on December 12, 2001. The Court has considered

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arguments by counsel, the record from the Phoenix City Court, and the Memoranda submitted. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice.

Appellant, Thomas George Delaney, was charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor offense in violation of A.R.S. Section 28-1381(A)(1), and Failure to Control Speed to Avoid a Collision, a Civil Traffic offense in violation of A.R.S. Section 28-701(A). Appellant entered pleas of Not Guilty and filed a Motion to Suppress which was heard by the trial court in an evidentiary hearing held on October 24-25, 2000. On October 25, 2000, at the conclusion of the evidentiary hearing, the trial court denied Appellant's Motion to Suppress. The case proceeded to a jury trial on December 19, 2000. Appellant was found guilty on December 20, 2000. Appellant has filed a timely Notice of Appeal in this case. An Appellate court must review a trial court's ruling on a Motion to Suppress using an abuse of discretion standard.¹ This Court must review the evidence in a light most favorable to upholding the trial judge's decision and resolve reasonable inferences against Appellant.² This Court must defer to the trial court's findings where there are any conflicts within the evidence.³ The trial court as a fact finder occupies the most advantageous position of weighing the credibility, veracity, and reliability of witnesses and other evidence.

In denying Appellant's Motion to Suppress, the trial judge stated:

The question of whether one's under arrest is obviously a mixed question because I have to consider the facts and I have to consider the law that's been given and is of record. It's

¹ State v. Jones, 185 Ariz. 471, 917 P.2d 200 (1996).

² State v. McKinney, 185 Ariz. 567, 917 P.2d 1214 (1996).

³ State v. Plew, 155 Ariz. 34, 745 P.2d 102 (1987).

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also obvious that whether one's under arrest or not is not determined subjectively by what is in the minds of individual parties but that the circumstances actually show occurred. In other words, the totality of the circumstances are to be reviewed and whether or not a reasonable person would believe that he was being arrested under the circumstances. . . .

In any event, the Court finds from those circumstances that there was an arrest and Defendant was under arrest at the time. ... Court finds Defendant did, in fact, refuse to take the blood test. Court finds that Defendant's attempt to recant was not made in a timely manner. ...

On that basis, the court denies Motion to Dismiss. The court denies Defendant's Motion to Prohibit Introduction of Evidence of Defendant's refusal, and now we're ready to proceed.⁴

First, Appellant contends that he was not under arrest at the time the Phoenix Police Officers requested that he submit to a blood test, and, therefore, he did not refuse the blood test and evidence of his refusal was erroneously admitted. The trial judge correctly applied an "objective" test and noted that the parties intentions and thoughts did not control whether a person is under arrest or not. Specifically, the trial judge found:

In this case, we find that Defendant was given a Miranda warning; we find implied consent was read to Defendant at least three different occasions, that the Defendant was in the constant presence of the police officer from the time the officers arrived at the hospital till the time they issued the citation and gave the - - read

⁴ R.T. of October 25, 2000 at pages 195-197.
Docket Code 512

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the order of the suspension and left and did not come back in to the hospital until with the wife at a later date (time) of which citations were signed and order was given to the Defendant prior to that time. In addition, we find that the Defendant never left the presence of the officer from the time they got there till including but not limited to, transfer to the X-ray The officer was even in the X-ray room while the Defendant was being X-rayed and then accompanied the Defendant back to the emergency room where he was being placed there until further treatment... .⁵

The record supports the trial judge's conclusions that given these objective *indicia* of arrest, a reasonable person in Appellant's position would conclude that he had been arrested.

Secondly, Appellant contends that the trial court erred in denying his Motion to Suppress/Dismiss because Appellant attempted to recant his refusal of the blood test, but the police officers refused to allow him to do so. Citing Gaunt v. Department of Transportation⁶, Appellant argues that the Phoenix Police unreasonably refused Appellant's offer to recant his refusal of the blood test. In a well worded oral ruling, the trial judge, the Honorable James Carter, found that the Phoenix Police did not interfere with Appellant's attempts to contact an attorney. The trial judge found:

The court finds (Defendant's) right to exculpatory evidence was not interfered with by the police officers. The court finds Defendant was read the implied consent on more than two occasions, in fact, it was three occasions of which Defendant did not agree to take the test. Court finds Defendant

⁵ R.T. of October 25, 2000 at pages 195-196.

⁶ 136 Ariz. 424, 666 P.2d 524 (App. 1983).

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did, in fact, refuse to take the blood test. Court finds that Defendant's attempt to recant was not made in a timely manner. The court finds... a traffic complaint was read and the order of suspension was read to the Defendant, and your Defendant did sign the traffic complaint prior to the Defendant's attempt to recant (his) refusal. ... The court further finds then that he was no longer in custody, and the court finds that the fact that the hospital refused to take the blood after the officer had left the hospital is no way attributed to any effort by the Defendant or by the State to interfere with the Defendant's right to obtain a sample.⁷

The trial judge's finding of fact regarding Appellant's attempt to recant his refusal to take the blood test is also supported by the record.

This Court must conclude that the trial court did not err in denying Appellant's motions.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings.

⁷ R.T. of October 25, 2000 at pages 196-197.
Docket Code 512